

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

TONY SOTO CORTEZ,
Defendant.

No. CR-03-2024-FVS

ORDER DENYING MOTION TO
VACATE

THIS MATTER comes before the Court based upon the defendant's motion to vacate. He is representing himself. The government is represented by Assistant United States Attorney Jane Kirk.

BACKGROUND

On October 16, 2003, the defendant pleaded guilty to the crime of distribution of a controlled substance. 21 U.S.C. § 841(a)(1). He admitted accountability for 57.07 grams of actual methamphetamine. (Plea Agreement, ¶¶ 6, 9(A).) This meant a mandatory minimum sentence of 120 months imprisonment. 21 U.S.C. § 841(b)(1)(A)(vii). On January 15, 2004, he was sentenced to 121 months in prison. Judgment was entered on January 22, 2004. The defendant did not appeal. On January 21, 2005, he moved to vacate his sentence pursuant to *Blakely v. Washington*, 542 U.S. ----, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). The Court has jurisdiction over his motion pursuant to 28 U.S.C. § 2255.

RULING

The defendant's *Blakely* claim fails for two reasons. To begin with, the rule announced by *Blakely* and *United States v. Booker*, --- U.S. ----, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), is procedural rather than substantive, and, under *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), the *Blakely/Booker* rule constitutes a new rule that does not apply retroactively to cases, such as the defendant's, that were final when *Blakely* was decided. See, e.g., *United States v. Price*, 400 F.3d 844 (10th Cir.2005). Furthermore, even if the *Blakely/Booker* rule applies to the defendant's case, he admitted accountability for a quantity of methamphetamine sufficient to trigger a 120-month mandatory minimum sentence.

IT IS HEREBY ORDERED:

The defendant's motion to vacate (**Ct. Rec. 46**) is denied.

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this order and furnish copies to the defendant and to counsel for the government.

DATED this 18th day of May, 2005.

s/ Fred Van Sickle
Fred Van Sickle
Chief United States District Judge